

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO. 05-10548-JLT

JOHN DEREK MURPHY,
Petitioner

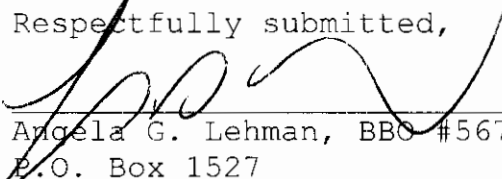
v.

MICHAEL A. THOMPSON,
MCI SHIRLEY, SUPERINTENDENT
Respondent

**MOTION FOR LEAVE TO PROCEED WITH HIS APPEAL
IN FORMA PAUPERIS PURSUANT TO F.R.A.P. 24 (a) (3) .**

Now comes the Petitioner John Derek Murphy in the above captioned matter and respectfully requests that the Court allow him to proceed with his appeal and the filing of his certificate of appealability *in forma pauperis*. As reason therefore the Petitioner attaches an Affidavit in support as well as a recent Inmate Transaction report which indicates that as of July 17, 2007 he continues to be indigent. The Petitioner has been almost continuously incarcerated since 1994. The Petitioner was previously allowed to file his 2254 petition *in forma pauperis* by this Court.

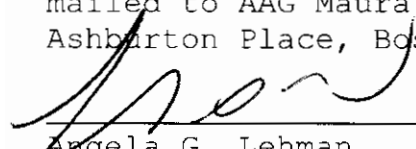
Respectfully submitted,



Angela G. Lehman, BBO #567411
P.O. Box 1527
Somerville, MA 02144
617-625-0807

CERTIFICATE OF SERVICE

I, Angela G. Lehman, do hereby certify that the MOTION FOR LEAVE TO PROCEED WITH HIS APPEAL *IN FORMA PAUPERIS* PURSUANT TO F.R.A.P. 24 (a) (3) with attachments has been mailed to AAG Maura McLaughlin, Criminal Bureau, One Ashburton Place, Boston, MA 02108 on August 22, 2007.



Angela G. Lehman

**Affidavit to Accompany
Motion for Leave to Appeal in Forma Pauperis**

District Court No. 05-10548-JLT
Appeal No. 07-2191

v.

Affidavit in Support of Motion	Instructions
<p>I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)</p> <p>Signed: <u><i>John Derek Mugh</i></u></p>	<p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: <u><i>July 31, 2007</i></u></p>

My issues on appeal are:

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months	Amount expected next month
	You Spouse	You Spouse
Employment	You \$ <u>0</u> Spouse \$ <u>N/A</u>	You \$ <u>0</u> Spouse \$ <u>N/A</u>
Self-employment	You \$ <u>0</u> Spouse \$ <u>N/A</u>	You \$ <u>0</u> Spouse \$ <u>N/A</u>
Income from real property (such as rental income)	You \$ <u>0</u> Spouse \$ <u>N/A</u>	You \$ <u>0</u> Spouse \$ <u>N/A</u>
Interest and dividends	You \$ <u>3.00</u> Spouse \$ <u>N/A</u>	You \$ <u>0</u> Spouse \$ <u>N/A</u>

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Gifts	\$ <u>120.-</u>	\$ <u>N/A</u>	\$ <u>100.-</u>	\$ <u>N/A</u>
Alimony	\$ <u>Q</u>	\$ <u>N/A</u>	\$ <u>Q</u>	\$ <u>N/A</u>
Child support	\$ <u>Q</u>	\$ <u>N/A</u>	\$ <u>Q</u>	\$ <u>N/A</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>Q</u>	\$ <u>N/A</u>	\$ <u>Q</u>	\$ <u>N/A</u>
Disability (such as social security, insurance payments)	\$ <u>Q</u>	\$ <u>N/A</u>	\$ <u>Q</u>	\$ <u>N/A</u>
Unemployment payments	\$ <u>Q</u>	\$ <u>N/A</u>	\$ <u>Q</u>	\$ <u>N/A</u>
Public-assistance (such as welfare)	\$ <u>Q</u>	\$ <u>N/A</u>	\$ <u>Q</u>	\$ <u>N/A</u>
Other (specify): _____	\$ <u>Q</u>	\$ <u>N/A</u>	\$ <u>Q</u>	\$ <u>N/A</u>
Total Monthly income:	\$ <u>120.-</u>	\$ <u>N/A</u>	\$ <u>100.-</u>	\$ <u>N/A</u>

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions)

Employer	Address	Dates of Employment	Gross monthly pay
<u>T.J. & Co.</u>	<u>NATICK</u>	<u>1993 ended</u>	<u>\$1600.-</u>
<u>INCARCERATED</u>	<u>1994 thru 1999</u>	<u>\$ 2000</u>	<u>TO DATE</u>
_____	_____	_____	_____

3. List your spouses's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions)

Employer	Address	Dates of Employment	Gross monthly pay
<u>N/A</u>	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. How much cash do you and your spouse have? \$ 198.80

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
<u>N/A</u>		\$ <u>0</u>	\$ <u>N/A</u>
		\$ <u>0</u>	\$ <u>N/A</u>
		\$ <u>0</u>	\$ <u>N/A</u>

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	(Value)	Other real estate	(Value)	Motor Vehicle #1	(Value)
<u>NONE</u>		<u>NONE</u>		Make & year: <u>NONE</u>	
				Model: <u>NONE</u>	
				Registration#: _____	
Motor Vehicle #2	(Value)	Other assets	(Value)	Other assets	(Value)
Make & year: <u>X N/A</u>		<u>NONE</u>		<u>NONE</u>	
Model: _____					
Registration#: _____					

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>NONE</u>	<u>NONE</u>	<u>NONE</u>

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
<u>LORI BARRETT</u>	<u>SISTER</u>	<u>46</u>
<u>NONE</u>	<u>NONE</u>	<u>NONE</u>

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Spouse
Rent or home mortgage payment (include lot rented for mobile home)	\$ <u>0</u>	\$ <u>N/A</u>
Are any real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and Telephone)	\$ <u>0</u>	\$ <u>N/A</u>
Home maintenance (repairs and upkeep)	\$ <u>0</u>	\$ <u>N/A</u>
Food	\$ <u>70.-</u>	\$ <u>N/A</u>
Clothing	\$ <u>10.-</u>	\$ <u>N/A</u>
Laundry and dry-cleaning	\$ <u>0</u>	\$ <u>N/A</u>
Medical and dental expenses	\$ <u>0</u>	\$ <u>N/A</u>
Transportation (not including motor vehicle payments)	\$ <u>0</u>	\$ <u>N/A</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u>N/A</u>
Insurance (not deducted from wages or included in Mortgage payments)	\$ <u>0</u>	\$ <u>N/A</u>
Homeowner's or renter's	\$ <u>0</u>	\$ <u>N/A</u>
Life	\$ <u>0</u>	\$ <u>N/A</u>
Health	\$ <u>0</u>	\$ <u>N/A</u>
Motor Vehicle	\$ <u>0</u>	\$ <u>N/A</u>
Other: <u>hygiene products</u>	\$ <u>20.-</u>	\$ <u>N/A</u>
Taxes (not deducted from wages or included in Mortgage payments)(specify): _____	\$ <u>0</u>	\$ <u>NA</u>
Installment payments	\$ <u>0</u>	\$ <u>NA</u>
Motor Vehicle	\$ <u>0</u>	\$ <u>N/A</u>
Credit card (name): <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Department store (name): <u>N/A</u>	\$ <u>0</u>	\$ <u>NA</u>
Other: <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>

Alimony, maintenance, and support paid to others	\$ <u>0</u>	\$ <u>N/A</u>
Regular expenses for operations of business, profession, or farm (attach detailed statement)	\$ <u>0</u>	\$ <u>N/A</u>
Other (specify): <u>NONE</u>	\$ <u>0</u>	\$ <u>N/A</u>
Total monthly expenses:	\$ <u>100.-</u> <u>Jm</u>	\$ <u>0</u>

9. Do you expect any major changes to your monthly income or expenses in your assets or liabilities during the next 12 months?

☐ Yes ☒ No

If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? \$ _____

If yes, state the attorney's name, address, and telephone number:

N/A

11. Have you paid — or will you be paying — anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☒ No

If yes, how much? \$ _____

If yes, state the person's name, address, and telephone number:

N/A

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

I've been incarcerated since 1994 with the exception of six months (01-99 to 07-99)

13. State the address of your legal residence.

4 High ST
EVERETT MA 02149

Your daytime phone number: () N/A.

Your age: 39 Your years of schooling: 12

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

Inmate Transaction Report

Date : 20070724 08:43

Commit# : W68679

OLD COLONY CORRECTIONAL CENTER

Page : 1

Name : MURPHY, JOHN, D.

Statement From 20070201

Inst : OLD COLONY CORRECTIONAL CENTER

To 20070724

Block : DAWES II

Cell/Bed : M18 /T

Transaction Date	Type	Receipt #	Check No	Inst Name	Notes	Personal		Savings	
						Income	Expense	Income	Expense
Total Transaction before this Period :						\$13,586.75	\$13,533.33	\$0.00	\$0.00
20070201 09:17	EX - External Disbursement	8138983	115272	OCC	-FREE WORLD NETWORK	\$0.00	\$20.00	\$0.00	\$0.00
20070201 09:17	MA - Maintenance and Administration	8138985		OCC	-Monthly Maintenance and Administration Fee	\$0.00	\$1.00	\$0.00	\$0.00
20070202 13:27	ML - Mail	8147847		STH	-JOANN BARRETT	\$100.00	\$0.00	\$0.00	\$0.00
20070202 13:27	TI - Transfer from Institution	8147848		STH	-Associate Receipt Number is 8147847	\$0.00	\$100.00	\$0.00	\$0.00
20070202 13:27	TI - Transfer from Institution	8147849		OCC	-Associate Receipt Number is 8147847	\$100.00	\$0.00	\$0.00	\$0.00
20070207 22:30	CN - Canteen	8178608		OCC	-Canteen Date : 20070205	\$0.00	\$31.40	\$0.00	\$0.00
20070212 16:01	IS - Interest	8200967		OCC		\$0.71	\$0.00	\$0.00	\$0.00
20070212 22:30	CN - Canteen	8214666		OCC	-Canteen Date : 20070212	\$0.00	\$59.86	\$0.00	\$0.00
20070220 22:30	CN - Canteen	8256054		OCC	-Canteen Date : 20070220	\$0.00	\$40.62	\$0.00	\$0.00
20070226 12:37	ML - Mail	8281469		STH	-JOANN BARRETT	\$160.00	\$0.00	\$0.00	\$0.00
20070226 12:37	TI - Transfer from Institution	8281471		OCC	-Associate Receipt Number is 8281469	\$160.00	\$0.00	\$0.00	\$0.00
20070226 12:37	TI - Transfer from Institution	8281470		STH	-Associate Receipt Number is 8281469	\$0.00	\$160.00	\$0.00	\$0.00
20070307 22:30	CN - Canteen	8347620		OCC	-Canteen Date : 20070307	\$0.00	\$58.18	\$0.00	\$0.00
20070308 08:03	IC - Transfer from Inmate to Club A/c	8347991		OCC	-OCCC RATIONAL RECOVERY - Z83-OCCC RATIONAL RECOVERY - Z83	\$0.00	\$5.00	\$0.00	\$0.00
20070308 08:44	CI - Transfer from Club to Inmate A/c	8348438		OCC	-REFUND 3/7/07-W68679 MURPHY,JOHN D PERSONAL-KCN WASH ACCOUNT - Z5	\$1.05	\$0.00	\$0.00	\$0.00
20070308 08:44	TI - Transfer from Institution	8348439		STH	-Associate Receipt Number is 8348438	\$0.00	\$1.05	\$0.00	\$0.00
20070308 08:44	TI - Transfer from Institution	8348440		OCC	-Associate Receipt Number is 8348438	\$1.05	\$0.00	\$0.00	\$0.00
20070312 13:54	ML - Mail	8363327		STH	-LORI BARRETT	\$40.00	\$0.00	\$0.00	\$0.00
20070312 13:54	MA - Maintenance and Administration	8363329		STH	-Monthly Maintenance and Administration Fee	\$0.00	\$1.00	\$0.00	\$0.00
20070312 13:54	TI - Transfer from Institution	8363331		STH	-Associate Receipt Number is 8363327	\$0.00	\$39.00	\$0.00	\$0.00
20070312 13:54	TI - Transfer from Institution	8363332		OCC	-Associate Receipt Number is 8363327	\$39.00	\$0.00	\$0.00	\$0.00
20070314 16:41	IS - Interest	8380073		OCC		\$0.41	\$0.00	\$0.00	\$0.00
20070320 22:30	CN - Canteen	8423524		OCC	-Canteen Date : 20070320	\$0.00	\$59.14	\$0.00	\$0.00
20070326 13:57	ML - Mail	8450103		STH	-JOANN BARRETT	\$100.00	\$0.00	\$0.00	\$0.00
20070326 13:57	TI - Transfer from Institution	8450104		STH	-Associate Receipt Number is 8450103	\$0.00	\$100.00	\$0.00	\$0.00
20070326 13:57	TI - Transfer from Institution	8450105		OCC	-Associate Receipt Number is 8450103	\$100.00	\$0.00	\$0.00	\$0.00
20070326 14:08	ML - Mail	8450255		STH	-NO DONOR MO#176062140	\$20.00	\$0.00	\$0.00	\$0.00
20070326 14:08	TI - Transfer from Institution	8450258		STH	-Associate Receipt Number is 8450255	\$0.00	\$20.00	\$0.00	\$0.00

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

Inmate Transaction Report

Date : 20070724 08:43

Commit# : W68679

OLD COLONY CORRECTIONAL CENTER

Page : 2

Name : MURPHY, JOHN, D.

Statement From 20070201

Inst : OLD COLONY CORRECTIONAL CENTER

To 20070724

Block : DAWES II

Cell/Bed : M18 /T

Transaction Date	Type	Receipt #	Check No	Inst Name	Notes	Personal		Savings	
						Income	Expense	Income	Expense
20070326 14:08	TI - Transfer from Institution	8450259		OCC	- Associate Receipt Number is 8450255	\$20.00	\$0.00	\$0.00	\$0.00
20070403 22:30	CN - Canteen	8497529		OCC	- Canteen Date : 20070402	\$0.00	\$59.40	\$0.00	\$0.00
20070410 22:30	CN - Canteen	8540116		OCC	- Canteen Date : 20070410	\$0.00	\$59.93	\$0.00	\$0.00
20070411 10:08	IC - Transfer from Inmate to Club A/c	8541379		OCC	- OCCC CATHOLIC CHURCH - Z164-OCCC CATHOLIC CHURCH - Z164	\$0.00	\$2.00	\$0.00	\$0.00
20070413 12:58	ML - Mail	8561395		STH	- JOANN BARRETT	\$110.00	\$0.00	\$0.00	\$0.00
20070413 12:58	MA - Maintenance and Administration	8561397		STH	- Monthly Maintenance and Administration Fee	\$0.00	\$1.00	\$0.00	\$0.00
20070413 12:58	TI - Transfer from Institution	8561399		STH	- Associate Receipt Number is 8561395	\$0.00	\$109.00	\$0.00	\$0.00
20070413 12:58	TI - Transfer from Institution	8561400		OCC	- Associate Receipt Number is 8561395	\$109.00	\$0.00	\$0.00	\$0.00
20070417 22:30	CN - Canteen	8574993		OCC	- Canteen Date : 20070417	\$0.00	\$59.17	\$0.00	\$0.00
20070419 15:46	IS - Interest	8595078		OCC		\$0.87	\$0.00	\$0.00	\$0.00
20070424 22:30	CN - Canteen	8626649		OCC	- Canteen Date : 20070424	\$0.00	\$59.60	\$0.00	\$0.00
20070501 22:30	CN - Canteen	8662607		OCC	- Canteen Date : 20070501	\$0.00	\$44.95	\$0.00	\$0.00
20070508 12:48	ML - Mail	8698847		STH	- BARRETT, LORI, ,	\$210.00	\$0.00	\$0.00	\$0.00
20070508 12:48	MA - Maintenance and Administration	8698849		STH	- Monthly Maintenance and Administration Fee	\$0.00	\$1.00	\$0.00	\$0.00
20070508 12:48	TI - Transfer from Institution	8698851		STH	- Associate Receipt Number is 8698847	\$0.00	\$209.00	\$0.00	\$0.00
20070508 12:48	TI - Transfer from Institution	8698852		OCC	- Associate Receipt Number is 8698847	\$209.00	\$0.00	\$0.00	\$0.00
20070508 22:30	CN - Canteen	8701429		OCC	- Canteen Date : 20070508	\$0.00	\$20.17	\$0.00	\$0.00
20070509 15:53	IS - Interest	8711506		OCC		\$0.77	\$0.00	\$0.00	\$0.00
20070515 22:30	CN - Canteen	8758679		OCC	- Canteen Date : 20070515	\$0.00	\$58.50	\$0.00	\$0.00
20070522 22:30	CN - Canteen	8792806		OCC	- Canteen Date : 20070522	\$0.00	\$55.19	\$0.00	\$0.00
20070605 22:30	CN - Canteen	8864510		OCC	- Canteen Date : 20070605	\$0.00	\$58.73	\$0.00	\$0.00
20070607 10:07	CI - Transfer from Club to Inmate A/c	8880230		OCC	- CANTEEN REFUND 6/6/07-W68679 MURPHY JOHN D PERSONAL-KCN WASH ACCOUNT - Z5	\$1.80	\$0.00	\$0.00	\$0.00
20070607 10:07	TI - Transfer from Institution	8880232		OCC	- Associate Receipt Number is 8880230	\$1.80	\$0.00	\$0.00	\$0.00
20070607 10:07	TI - Transfer from Institution	8880231		STH	- Associate Receipt Number is 8880230	\$0.00	\$1.80	\$0.00	\$0.00
20070607 12:56	ML - Mail	8881778		STH	- BARRETT, JO-ANN, ,	\$125.00	\$0.00	\$0.00	\$0.00
20070607 12:56	TI - Transfer from Institution	8881783		OCC	- Associate Receipt Number is 8881778	\$124.00	\$0.00	\$0.00	\$0.00
20070607 12:56	MA - Maintenance and Administration	8881780		STH	- Monthly Maintenance and Administration Fee	\$0.00	\$1.00	\$0.00	\$0.00
20070607 12:56	TI - Transfer from Institution	8881782		STH	- Associate Receipt Number is 8881778	\$0.00	\$124.00	\$0.00	\$0.00
20070612 22:30	CN - Canteen	8904968		OCC	- Canteen Date : 20070612	\$0.00	\$59.53	\$0.00	\$0.00

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
Inmate Transaction Report**

Date : 20070724 08:43

Commit# : W68679

OLD COLONY CORRECTIONAL CENTER

Page : 3

Name : MURPHY, JOHN, D,

Statement From 20070201

Inst : OLD COLONY CORRECTIONAL CENTER

To 20070724

Block : DAWES II

Cell/Bed : M18 /T

Transaction Date	Type	Receipt #	Check No	Inst Name	Notes	Personal		Savings	
						Income	Expense	Income	Expense
20070614 15:58	IS - Interest	8925092		OCC		\$0.48	\$0.00	\$0.00	\$0.00
20070626 22:30	CN - Canteen	8992384		OCC	-Canteen Date : 20070626	\$0.00	\$58.70	\$0.00	\$0.00
20070705 13:32	ML - Mail	9044961		STH	-BARRETT, JO-ANN, .	\$150.00	\$0.00	\$0.00	\$0.00
20070705 13:32	TI - Transfer from Institution	9044966		OCC	-Associate Receipt Number is 9044961	\$149.00	\$0.00	\$0.00	\$0.00
20070705 13:32	TI - Transfer from Institution	9044965		STH	-Associate Receipt Number is 9044961	\$0.00	\$149.00	\$0.00	\$0.00
20070705 13:32	MA - Maintenance and Administration	9044963		STH	-Monthly Maintenance and Administration Fee	\$0.00	\$1.00	\$0.00	\$0.00
20070710 22:30	CN - Canteen	9070468		OCC	-Canteen Date : 20070710	\$0.00	\$59.10	\$0.00	\$0.00
20070711 15:53	IS - Interest	9077951		OCC		\$0.36	\$0.00	\$0.00	\$0.00
20070717 13:25	CI - Transfer from Club to Inmate A/c	9120720		OCC	-CANTEEN REFUND 7/9/07-W68679 MURPHY, JOHN D PERSONAL-KCN WASH ACCOUNT - Z5	\$59.10	\$0.00	\$0.00	\$0.00
20070717 13:25	TI - Transfer from Institution	9120721		STH	-Associate Receipt Number is 9120720	\$0.00	\$59.10	\$0.00	\$0.00
20070717 13:25	TI - Transfer from Institution	9120722		OCC	-Associate Receipt Number is 9120720	\$59.10	\$0.00	\$0.00	\$0.00
						\$2,152.50	\$2,007.12	\$0.00	\$0.00

Balance as of ending date :
Personal \$198.80
Savings \$0.00

Current Balances :

Personal	Savings	Freeze	Loan	Restitution	Sentence
\$198.80	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00